

HOUSE BILL No. 1031

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-31; IC 34-30-2-137.5.

Synopsis: Landlord-tenant law. Provides for the eviction of a tenant by the county sheriff without a judicial order after the expiration of the rental agreement.

Effective: July 1, 2003.

Smith V, Brown C

January 7, 2003, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1031

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 32-31-4-4, AS ADDED BY P.L.2-2002, SECTION
2 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2003]: Sec. 4. (a) A warehouseman that receives property under this
4 chapter **or IC 32-31-9** holds a lien on all of that property that is not
5 exempt property to the extent of the expenses for any of the following
6 incurred by the warehouseman with respect to all of the property,
7 whether exempt or not exempt:

8 (1) Storage.

9 (2) Transportation.

10 (3) Insurance.

11 (4) Labor.

12 (5) Present or future charges related to the property.

13 (6) Expenses necessary for preservation of the property.

14 (7) Expenses reasonably incurred in the lawful sale of the
15 property.

16 (b) A tenant may claim the tenant's property at any time until the
17 sale of the property under section 5 of this chapter by paying the

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warehouseman the expenses described in this section.

SECTION 2. IC 32-31-4-5, AS ADDED BY P.L.2-2002, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. If a tenant does not claim the tenant's property within ninety (90) days after:

(1) receiving notice under section 3 of this chapter; **or**

(2) **the surrender date (as defined in IC 32-31-9-2);**

a warehouseman may sell the property received under this chapter under IC 26-1-7-210(2).

SECTION 3. IC 32-31-5-5, AS ADDED BY P.L.2-2002, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) Except as provided in IC 16-41-27-29, IC 32-31-3, ~~or~~ IC 32-31-4, **or IC 32-31-9**, a landlord may not:

(1) take possession of;

(2) remove from a tenant's dwelling unit;

(3) deny a tenant access to; or

(4) dispose of;

a tenant's personal property in order to enforce an obligation of the tenant to the landlord under a rental agreement.

(b) The landlord and tenant may agree in a writing separate from the rental agreement that the landlord may hold property voluntarily tendered by the tenant as security in exchange for forbearance from an action to evict.

SECTION 4. IC 32-31-5-6, AS ADDED BY P.L.2-2002, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) This section does not apply if the dwelling unit has been abandoned.

(b) For purposes of this section, a dwelling unit is considered abandoned if:

(1) the tenants have failed to:

(A) pay; or

(B) offer to pay;

rent due under the rental agreement; and

(2) the circumstances are such that a reasonable person would conclude that the tenants have surrendered possession of the dwelling unit.

An oral or written rental agreement may not define abandonment differently than is provided by this subsection.

(c) Except as authorized by **IC 32-31-9** **or** judicial order, a landlord may not deny or interfere with a tenant's access to or possession of the tenant's dwelling unit by commission of any act, including the following:

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(1) Changing the locks or adding a device to exclude the tenant from the dwelling unit.

(2) Removing the doors, windows, fixtures, or appliances from the dwelling unit.

(3) Interrupting, reducing, shutting off, or causing termination of any of the following to a tenant:

(A) Electricity.

(B) Gas.

(C) Water.

(D) Other essential services.

However, the landlord may interrupt, shut off, or terminate service as the result of an emergency, good faith repairs, or necessary construction. This subdivision does not require a landlord to pay for services described in this subdivision if the landlord has not agreed, by an oral or written rental agreement, to do so.

(d) A tenant may not interrupt, reduce, shut off, or cause termination of:

(1) electricity;

(2) gas;

(3) water; or

(4) other essential services;

to the dwelling unit if the interruption, reduction, shutting off, or termination of the service will result in serious damage to the rental unit.

SECTION 5. IC 32-31-9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 9. Eviction of a Tenant After Expiration of the Rental Agreement

Sec. 1. Except as otherwise provided in this chapter, the definitions in IC 32-31-3 and IC 32-31-5 apply throughout this chapter.

Sec. 2. As used in this chapter, "surrender date" refers to the date determined by the landlord and set forth in a notice under section 3(1)(B) of this chapter.

Sec. 3. To evict a tenant under this chapter, a landlord must do the following:

(1) Notify the tenant by United States mail addressed to the tenant at the dwelling unit address. The notice must contain the following information:

(A) A statement that:



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(i) the term of the rental agreement has expired or will expire; and

(ii) the landlord has chosen not to renew the rental agreement.

(B) The date by which the tenant must surrender possession of the dwelling unit and remove all the property in the dwelling unit that is not the property of the landlord. The surrender date may not be earlier than either of the following:

(i) The date the rental agreement expires.

(ii) Thirty (30) days after the date of the notice.

(C) That if the tenant does not surrender the dwelling unit before the end of the surrender date, the county sheriff will remove the tenant from the dwelling unit.

(D) That if the tenant does not remove all the property in the dwelling unit that is not the property of the landlord before the end of the surrender date, that property will be:

(i) removed from the dwelling unit;

(ii) stored at the tenant's expense with a warehouseman identified in the notice; and

(iii) sold if not claimed by the tenant within ninety (90) days after the surrender date.

The notice may contain any other information that the landlord wants to include in the notice.

(2) File the following with the county sheriff of the county in which the rental unit is located:

(A) An original copy of the rental agreement containing the signature of the tenant.

(B) A copy of the notice sent under subdivision (1).

(C) Any other information required by the county sheriff.

The landlord must file the information required by this subdivision not later than a date determined by the county sheriff. The date must be before the county sheriff acts under section 4 of this chapter.

Sec. 4. (a) If the tenant has not surrendered the dwelling unit and removed from the dwelling unit all the property that is not the property of the landlord by the end of the surrender date, the landlord may notify the county sheriff.

(b) If a landlord notifies the county sheriff under subsection (a), the county sheriff shall remove the tenant and remove from the dwelling unit all the property that is not the property of the landlord. The property removed from the dwelling unit shall be



delivered to a warehouseman and stored. IC 32-31-4-4 and IC 32-31-4-5 apply to property removed from the dwelling unit under this section.

Sec. 5. (a) A tenant has a cause of action against the landlord who has evicted the tenant under this chapter if the tenant had a right to possession of the dwelling unit under the rental agreement after the surrender date.

(b) If the tenant is the prevailing party in an action under this section, the tenant may obtain any of the following, if appropriate under the circumstances:

(1) Recovery of the following from the landlord:

(A) Actual damages and consequential damages.

(B) Damages caused by the county or an officer or employee of the county acting or failing to act under this chapter.

(C) Attorney's fees and court costs.

(2) Injunctive relief.

(3) Any other remedy appropriate under the circumstances.

Sec. 6. A tenant evicted under this chapter does not have a cause of action against the county or an officer or employee of the county resulting from any action or failure to act under this chapter.

Sec. 7. A landlord's failure to use the remedy provided under this chapter does not foreclose:

(1) a cause of action the landlord has in a judicial proceeding;
or

(2) the use of remedies under other statutes.

SECTION 6. IC 34-30-2-137.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 137.5. IC 32-31-9-6 (Concerning counties and officers and employees of counties for actions or failures to act in eviction of tenants under IC 32-31-9).**

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